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9 UNITED STATES DISTRICT COURT  
10 DISTRICT OF NEVADA

11 DEON MERCED, an individual; SERTHA  
12 EVANS, an individual; and each of them  
on behalf of all other similarly situated,

13 Plaintiffs,

14 v.

15 NEVADA PROPERTY 1, LLC d/b/a THE  
16 COSMOPOLITAN LAS VEGAS; DOES I  
through V, inclusive; and ROE  
17 CORPORATIONS I through V, inclusive,

18 Defendants.

CASE NO.: 2:20-CV-00920-RBF-VCF

**FINAL ORDER APPROVING  
CLASS ACTION SETTLEMENT  
AND ATTORNEY'S FEES AND  
COSTS**

19 Plaintiffs Deon Merced and Sertha Evans, together with the Opt-In  
20 Plaintiffs (collectively "Plaintiffs"), and Defendant Nevada Property 1, LLC d/b/a  
21 The Cosmopolitan Las Vegas ("Defendant") (hereinafter collectively referred to  
22 as "the Parties"), by and through their attorneys of record, hereby submit this  
23  
24

1 Proposed Final Order Approving Class Action Settlement and Attorney's Fees  
2 and Costs.

3 The Parties' Amended Joint Motion for Final Certification of Collective  
4 Action and Final Approval of Collective Action Settlement came on for hearing  
5 before the Honorable Judge Richard F. Boulware, II, on April 17, 2023, in  
6 chambers. The Court, having considered the papers and pleadings submitted in  
7 support of the Motion, HEREBY ORDERS AS FOLLOWS:

8 1. The Court grants the Motion based upon the terms set forth in the  
9 Settlement Agreement and Release ("Settlement") between Plaintiffs and  
10 Defendant.

11 2. This Court has jurisdiction over the subject matter of this litigation  
12 and all matters relating thereto, including Plaintiffs, all settlement class  
13 members, and Defendant.

14 3. Pursuant to 29 U.S.C. § 216, the Court certifies as final, for  
15 purposes of settlement only, a collective action under the Fair Labor Standards  
16 Act ("FLSA"). The class shall consist of Plaintiffs Deon Merced, Sertha Evans,  
17 and all Opt-In Plaintiffs who worked as Slot Guest Service Representatives  
18 and/or as Cage Cashiers in the High Limit Slots cage for Defendant The  
19 Cosmopolitan Las Vegas between March 23, 2018, and October 25, 2020; timely  
20 filed valid opt-in forms, as defined in the Settlement; and filed valid Claims  
21 Forms on or before March 31, 2022, pursuant to this Court's Order Granting  
22 Motion for Approval of Collective Action Settlement (ECF No. 35).

4. The Parties' Settlement in the amount of Eight Hundred Sixty-Three Thousand Forty Dollars and Zero Cents (\$863,040.00) is the product of contested litigation to resolve *bona fide* disputes over the availability and amount of wages allegedly withdrawn from the tip pool over the relevant time period.

5. The Court finds that the Settlement is within the range of reasonableness and that this amount is fair, adequate, and reasonable as to all potential members of the Class when balanced against the probable outcome of further litigation, and ultimately relating to liability and damages issues.

6. As ordered by this Court, on December 13, 2021, JND Legal Administration LLC, the Claims Administrator, mailed out Notices of Settlement and Claims Forms to Class Members.

7. As of March 31, 2022, the Claim Deadline, the Claims Administrator reported timely receipt of 63 Claim Forms, representing a return rate of 82.90%.

8. No Class Members objected to the Settlement.

9. The 63 participating Class Members will be paid their portion of the Net Settlement Fund, estimated to be \$545,784.02.

10. Consistent with the Parties' Settlement, the remaining Net Settlement Fund, \$62,506.01<sup>1</sup>, shall be distributed to cy pres beneficiary Dress

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<sup>1</sup> Pursuant to the Parties Settlement, Defendant must fund this payment on or before November 30, 2023, which is thirty (30) days after the expiration of the statute of limitations.

1 for Success Southern Nevada, an organization that empowers women to achieve  
 2 economic independence by providing professional support, attire, and tools  
 3 related to employment. The Court finds a sufficient nexus between the Class  
 4 Members and the cy pres beneficiary. *See Dennis v. Kellogg Co.*, 697 F.3d 858,  
 5 865 (9th Cir. 2012) (“To avoid the many nascent dangers to the fairness of the  
 6 distribution process, we require that there be a driving nexus between the  
 7 plaintiff class and the cy pres beneficiaries.”).

8 11. The Court appoints Deon Merced and Sertha Evans as Class  
 9 Representatives and approves an award of Fifteen Thousand Dollars and Zero  
 10 Cents (\$15,000.00) each to Merced and Evans for their services as Class  
 11 Representatives in this matter.<sup>2</sup>

12 12. The Court appoints Sean K. Claggett, of Claggett & Sykes Law  
 13 Firm, as Class Counsel.

14 13. Plaintiffs’ request for Class Counsels’ fees in the amount of Two  
 15 Hundred Fifteen Thousand Seven Hundred Sixty Dollars and Zero Cents  
 16 (\$215,760.00) is reasonable. This amount represents 25% of the Gross  
 17 Settlement Fund. “The typical range of acceptable attorneys’ fees in the Ninth  
 18 Circuit is 20 percent to 33.3 percent of the total settlement value with 25 percent  
 19 considered a benchmark percentage.” *Barbosa v. Cargill Meat Sol. Corp.*, 297  
 20 F.R.D. 431, 448 (E.D. Cal. 2013) (citing *Powers v. Eichen*, 229 F.3d 1249, 1256

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 22  
 23 <sup>2</sup> Defendant already paid these service awards directly due to the 48-hour timing  
 24 required by the Parties’ agreement. Thus, this obligation has been satisfied and  
 this amount is not required to be deposited into the Settlement Fund.

(9th Cir. 2000)). “In assessing whether the percentage requested is fair and reasonable, courts generally consider the following factors: (1) the results achieved; (2) the risk of litigation; (3) the skill required; (4) the quality of work performed; (5) the contingent nature of the fee and the financial burden; and (6) the awards made in similar cases.” *Sinanyan v. Luxury Suites Int’l, LLC*, 2018 U.S. Dist. LEXIS 21403, at \*11 (D. Nev. Feb. 8, 2018) (citing *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047-50 (9th Cir. 2002)). Having considered these factors, the Court finds the request for Class Counsels’ fees in the amount of \$215,760.00 to be reasonable.

14. The Court finds Plaintiffs’ request for Class Counsels’ costs in the amount of Eight Thousand Dollars and Zero Cents (\$8,000.00) fair, adequate, and reasonable.

15. The Court directs the Parties and Claims Administrator to effectuate the settlement terms as set forth in the Settlement.

16. Having found this amount to be reasonable, the Court directs Defendant within seven (7) calendar days of the Settlement Effective Date<sup>3</sup> to

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<sup>3</sup> The Collective Action Settlement Agreement states as follows: “1. Effective Date: “Settlement Effective Date” is defined as the latter of: (1) the date when the time for appeal of the final judgment dismissing Case No. 2:20-cv-00920-RFB-VCF (“the Action”) has expired; or (2) the date of the final resolution of any appeal or other judicial review of the Agreement if an appeal has been filed and not dismissed.”

deposit proceeds for the Settlement Fund (less \$30,000 for the Service Awards which have already been paid and the \$62,507.01 for the cy pres beneficiary).

17. The Court directs the Claims Administrator to pay Class Counsel fees and costs in the amount of \$215,760.00 and \$8,000.00, respectively, within thirty (30) days of receipt of the settlement proceeds.

18. The Court directs the Claims Administrator to issue payment to the Settlement Class Members within thirty (30) days of receipt of settlement proceeds.

19. The Court directs the Net Settlement Funds, in the amount of \$62,506.01, be issued to cy pres beneficiary Dress for Success Southern Nevada in accordance with the Settlement Agreement and this Order.

20. This action is dismissed with prejudice.

21. The Court retains jurisdiction to enforce the terms of the Settlement.

Dated: April 28, 2023.

CLAGGETT & SYKES LAW FIRM

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IT IS SO ORDERED:



RICHARD F. BOULWARE, II  
United States District Judge